

E-FILED - 6/17/09

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KYRON L. HIGHTOWER,
Petitioner,

v.

TOM FELKER, Warden
Respondent.

No. C 07-1338 RMW (PR)

**ORDER GRANTING
EXTENSIONS OF TIME TO
FILE NOTICE OF APPEAL AND
APPLICATION FOR
CERTIFICATE OF
APPEALABILITY**

(Docket No. 38, 40)

Petitioner filed a *pro se* habeas petition. Following briefing by the parties, this court denied the petition on the merits and entered judgment on March 18, 2009. On April 16, 2009, petitioner filed a motion for extension of time in filing his certificate of appealability (“COA”) and objection to the court’s denial of petitioner’s habeas corpus.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal “be filed with the clerk of the district court within 30 days after the entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1). Relief from the deadline for a timely notice of appeal may be obtained by a motion in the district court under Rule 4(a)(5), which allows for an extension of time if the party requests it within thirty days of the expiration of the time to file the notice and shows excusable neglect or good cause. *See* Fed. R. App. P. 4(a)(5).

1 Petitioner filed his motion for extension of time in filing his COA and objection to the
2 court's denial of petitioner's habeas corpus within thirty days of the expiration of the time to
3 file his notice of appeal (on April 16, 2009), and the motion shows good cause. Furthermore,
4 petitioner mailed his notice of appeal within the time he requested in the motion for extension
5 of time (on May 18, 2009). *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (a pro se
6 prisoner's notice of appeal is deemed filed on the date of its submission to prison authorities
7 for mailing to the court, as opposed to the date of its receipt by the court clerk). Because *pro*
8 *se* filings have to be liberally construed, the court construes petitioner's motion as a request
9 for an extension of time to file a notice of appeal, GRANTS petitioner's motion (docket no.
10 38), and deems the notice of appeal (docket no. 39) timely filed.

11 Additionally, on March 26, 2009, petitioner filed another motion for an extension of
12 time to file an application for a COA. Good cause appearing, petitioner's request (docket no.
13 40) is GRANTED. Petitioner shall file a COA within **fifteen (15) days** of the filing date of
14 the court's order.

15 IT IS SO ORDERED.

16 DATED: 6/16/09


RONALD M. WHYTE
United States District Judge